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Date: NOVEMBER 23, 2005

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Client/Matter No.: FR 000029 (7790/353)

of Pages: 19

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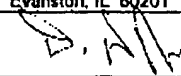
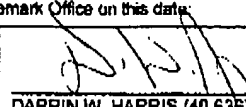
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TRANSMITTAL FORM <i>(to be used for all correspondence after initial filing)</i>	Attorney Docket No.	FR000029 (7790/353)
	Application Number	09/817,086
	Filing Date	MARCH 26, 2001
	First Named Inventor	JEAN-MICHEL SIMON
	Group Art Unit	2682
	Examiner	PHU, SANH D.

ENCLOSURES (check all that apply)		
<input type="checkbox"/> Amendment <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Status Letter <input type="checkbox"/> Petition for Extension of Time Request (duplic) <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement, PTO-1449, art <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application	<input type="checkbox"/> Assignment Papers (for an Application) <input type="checkbox"/> Drawings: <input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Petition Routing Slip (PTO/SB/69) and Accompanying Petition <input type="checkbox"/> To Convert a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Small Entity Statement <input type="checkbox"/> Request of Refund	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Brief (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Post Card Receipt <input type="checkbox"/> Additional Enclosure(s) (please identify below): <div style="border: 1px solid black; height: 20px; width: 100%;"></div> <div style="border: 1px solid black; height: 20px; width: 100%;"></div> <div style="border: 1px solid black; height: 20px; width: 100%;"></div>
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First Presentation of Multiple Dep. Claim					+ \$180=	—	+ \$360=
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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm or Individual name	DARRIN W. HARRIS Registration No. 40,636 CARDINAL LAW GROUP 1603 Orrington Avenue, Suite 2000 Evanston, IL 60201		
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Darrin Wesley Harris (40,636)
Name of Appellant, assignee or registered representative

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PATENT
Case No. FR 000029
(7790/353)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re patent application of:)	
)	
JEAN-MICHEL SIMON)	
)	
Serial No.: 09/817,086)	Examiner: PHU, SANH D.
)	
Filed: MARCH 26, 2001)	Group Art Unit: 2682
)	
For: APPARATUS COMPRISING A)	
STORAGE DEVICE FOR STORING)	
PERFORMANCE DATA AND)	
METHOD OF UPDATING THIS)	
STORAGE DEVICE)	

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Appellant herewith respectfully presents a Brief on Appeal as follows:

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1. REAL PARTY IN INTEREST

The real party in interest is the assignee of record U.S. Philips Corporation, a Delaware corporation having an office and a place of business at 1251 Avenue of the Americas, New York, NY 10020-1104.

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2. RELATED APPEALS AND INTERFERENCES

Appellant and the undersigned attorney are not aware of any other appeals or interferences which will directly affect or be directly affected by or having a bearing on the Board's decision in the pending appeal.

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3. STATUS OF CLAIMS

Claims 1-7 are currently pending in the present application, and are the claims on appeal. See, Claims Appendix.

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4. STATUS OF AMENDMENTS

Appellant did not file an after final request for reconsideration under 37 C.F.R. §1.116 in response to a Final Office Action dated May 24, 2005. A preliminary amendment of claims 5 and 7 were filed concurrently with the application on March 26, 2001, and entered into the record. An amendment of claims 107 in response to a Non-Final Office Action dated December 31, 2003, was filed April 1, 2004, and entered into the record.

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5. SUMMARY OF THE INVENTION

As illustrated in FIGS. 1 and 2, apparatuses in the form of a pair of mobile radio telephones 1 and 50 of the same type both include a microprocessor 42 and an interface 85 for exchanging update data for updating operation software stored within a memory 45 of radio telephone 1. The updating involves a communication by radio telephone 50 of the update data stored within its memory 45 to the memory 45 of radio telephone 1 via a link/connection 80 whereby operation software stored previously stored within the memory 45 of radio telephone 1 is updated with the update data from the memory 45 of radio telephone 50. See, U.S. Patent Application Serial No. 09/817,086 at page 1, lines 10-12; and page 2, line 23 to page 3, line 4.

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6. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-7 stand finally rejected under 35 U.S.C. §112, ¶1 as failing to comply with the written description requirement.

Claims 1, 2 and 5-7 stand finally rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,062,132 to *Yasuda et al.* in view of U.S. Patent No. 6,771,317 to *Ellis et al.*

Claims 3 and 4 stand finally rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,062,132 to *Yasuda et al.* in view of U.S. Patent No. 6,771,317 to *Ellis et al.* and in further view of U.S. Patent No. 6,285,916 to *Kadaba et al.*

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7. ARGUMENT

Written Description Rejection. Specifically, Examiner Phu respectfully asserts the specification and abstract does not support the limitation "operation software" as recited in independent claims 1, 5 and 7 in view of the disclosure of PCT WO 97/35453 for updating and modifying the operation software is unsupported, because the Appellant did not incorporate PCT WO 97/35453 by reference in the original specification and Examiner Phu did not find any portion of the specification that is clearly disclosed that Appellant's invention is directly "operation software". The Appellant respectfully disagrees with the aforementioned assertion by Examiner Phu for two reasons.

First, a careful review of the present application reveals the present application was not directed in view of relying on PCT WO 97/35453 to fulfill its written description, best mode and enablement requirements in accordance with 35 U.S.C. §112. Instead, the present application was directed to indicate it was an advancement over PCT WO 97/35453. Thus, there is no need to incorporate PCT WO 97/35453 by reference in the original specification.

Second, the original specification clearly states "The invention relates to an apparatus of a certain type comprising a storage device for storing performance data. . . For updating or modifying the operation software of the apparatus, there is proposed in this patent document to utilize a PC type of computer, for example. See, *U.S. Patent Application Serial No. 09/817,086* at page 1, lines 1-12. Clearly, the above underlined

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statement is a portion of the specification that clearly discloses that the Appellant's invention is directed to operation software. This is further evidenced by the disclosure of the elements (i.e., operation software) that are stored in a flash memory 45 (FIG. 2) for purposes of determining an operation of an apparatus 1 (FIG. 1). See, U.S. Patent Application Serial No. 09/817,086 at page 2, lines 18-30.

Withdrawal of the rejection of claims 1-7 under 35 U.S.C. §112, ¶1 as failing to comply with the written description requirement is therefore respectfully requested.

Obviousness Rejections. To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. See, MPEP §2143.

The Appellant respectfully asserts that Examiner Phu has failed to establish a *prima facie* case of obviousness in view of the fact that there is no suggestion or modification to *modify Yasuda* in view of *Ellis* as proposed by Examiner Phu.

Specifically, as illustrated in FIGS. 1 and 2, *Yasuda* teaches an operation of a predetermined key of a handset unit 1A to transfer non-performance data (e.g., phone numbers) stored in a memory 9 incorporated within handset unit 1A to a memory 9 incorporated within a handset unit 1B whereby the non-performance data that was

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manually inputted for storage in memory 9 of handset unit 1A can be copied to memory 9 of handset unit 1B with an elimination of the requirement to manually input the same non-performance data into handset unit 1B. *See, Yasuda* at Abstract; column 1, line 67 to column 2, line 11; column 2, line 66 to column 3, line 2; column 3, lines 59-68; column 5, lines 39-50; and column 6, lines 4-19; and column 6, lines 48-61. Thus, at the time of the present invention, one having ordinary skill in the art would have understood the teachings of *Yasuda* were exclusively directed to transferring non-performance data manually inputted by anyone (e.g., a software novice or a software expert) into handset unit 1A to unit handset 1B to thereby eliminate a need for a manual input of non-performance data into handset unit 1B. Conversely, at the time of the present invention, one having ordinary skill in the art would have understood the teachings of *Yasuda* were directed away from transferring performance data (e.g., software of *Ellis*) manually inputted by a software expert into handset unit 1A to handset unit 1B to thereby eliminate a need for a manual input of performance data into handset unit 1B, because it would be have been impossible for a software expert to manually input performance data into handset unit 1A. Thus, there is no motivation or suggestion to modify *Yasuda* to include an “updating means for updating the operation software stored within said storage device via an interfacing with another apparatus of the same type” as recited in independent claim 1, “tapping update data from a second apparatus of the same type as the first apparatus to update the operation software in the first apparatus” as recited in independent claim 5, and “means for exchanging update data for updating operation

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software stored within a first apparatus, wherein a second apparatus communicates the update data to the first apparatus and the operation software stored within the first apparatus is updated with the update data” are recited in independent claim 7.

Withdrawal of the rejection of claims 1, 2 and 5-7 under §103(a) as being patentable over *Yasuda* in view of *Ellis* is therefore respectfully requested.

Claims 3 and 4 depend from independent claim 1. Therefore, dependent claims 3 and 4 include all of the elements and limitations of independent claim 1. It is therefore respectfully submitted by the Appellant that dependent claims 3 and 4 are allowable over *Yasuda* in view of *Ellis* and in further view of *Kadaba* for at least the same reason as set forth with respect to independent claim 1 being allowable over *Yasuda* in view of *Ellis*. Withdrawal of the rejection of dependent claims 3 and 4 under U.S.C. §103(a) as being patentable over *Yasuda* in view of *Ellis* and in further view of *Kadaba* is therefore respectfully requested.

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Dated: November 23, 2005

Respectfully submitted,

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CLAIMS APPENDIX

1. An apparatus of a certain type, comprising:
a storage device for storing operation software; and
updating means for updating the operation software stored within said storage device via an interfacing with another apparatus of the same type.
2. The apparatus as claimed in claim 1, wherein said updating means are formed by a serial wire link.
3. The apparatus as claimed in claim 1, wherein said updating means are formed by an infrared link.
4. The apparatus as claimed in claim 1, wherein said updating means are formed by a radio link of the type "Blue Tooth".
5. A method, comprising:
storing operation software in a first apparatus; and
tapping update data from a second apparatus of the same type as the first apparatus to update the operation software in the first apparatus.

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6. The method as claimed in claim 5, wherein tapping update data from a second apparatus of the same type as the first apparatus to update the operation software in the first apparatus includes:

preparing the second apparatus for producing the update data;

preparing the first apparatus for receiving the update data;

transferring the update data from the second apparatus to the first apparatus; and

writing update data in the storage device of the first apparatus.

7. A system, comprising:

at least two apparatus of the same type; and

means for exchanging update data for updating operation software stored within a first apparatus, wherein a second apparatus communicates the update data to the first apparatus and the operation software stored within the first apparatus is updated with the update data.

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EVIDENCE APPENDIX

None.

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RELATED PROCEEDINGS APPENDIX

None.